Lembaga Tatatertib Peguam-Peguam v Hoo Lin Coln & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–8 OF 2006(W)
NIK HASHIM, AUGUSTINE PAUL AND ABDUL AZIZ MOHAMAD FCJJ
14 MAY 2008

Legal Profession — Disciplinary proceedings — Disciplinary board/committee — Powers of disciplinary committee — Whether disciplinary board competent to appeal within meaning of s 103E of the Legal Profession Act 1976 — Whether disciplinary board 'party aggrieved'

Wong Weng Woh, the second respondent, a senior partner in a legal firm lodged a fresh complaint against Hoo Lin Coln, the first respondent, to the Disciplinary Board of the Bar Council ('the DB') on 17 November 2000 after the first complaint by a client was withdrawn. An inquiry was conducted by the investigating tribunal which recommended that no action be taken against the first respondent. However, the DB proceeded to appoint a disciplinary committee ('the DC') to conduct a formal investigation into the complaint. At the conclusion of the hearing the DC recommended that the first respondent be struck off the roll and the DB concurred with it. The first respondent then appealed to the High Court against the order. The High Court allowed the appeal with costs. Subsequently the DB appealed to the Federal Court against the order made with Hoo Lin Coln as the first respondent and Wong Weng Woh as the second respondent. At the commencement of the hearing of this appeal the first respondent raised a preliminary objection questioning the competency of the appellant, the DB, to bring the appeal as a party aggrieved within the meaning of s 103E of the Legal Profession Act 1976 ('the LPA'). The first respondent contended that the DB had no power to bring this appeal. In support he said that: (i) the LPA did not authorise the DB to do anything besides adjudicating on a complaint and having done so became functus officio with its role in subsequent proceedings being only as amicus curiae; (ii) the DB was not a 'party aggrieved' within the meaning of s 103E of the LPA; and (iii) the DB being an appellant made it a suitor and judge at the same time thereby conflicted with the rule of natural justice that no man shall be a judge in his own cause. The DB contended that it had a right to appeal.

Held, dismissing the preliminary objection with no order as to costs:

(1) (per **Augustine Paul FCJ**) The meaning to be accorded to the expression 'person aggrieved' would depend on the context of the purpose and provision of the statute in question. The rationale underlying the wider interpretation of the expression 'person aggrieved' to give statutory tribunals the right of appeal was to protect the public interest which they were duty bound to uphold (see para 14); *College of Dental Surgeons v Findlay* 2000 BCTC Lexis 1574.

(2) (per **Augustine Paul FCJ**) Such an interest, in the case of advocates and solicitors, was entrusted to the Malaysian Bar by s 42 of the LPA. It was clear from s 42 that it was the Bar Council that had been entrusted with the duty of maintaining the standard and conduct of advocates and solicitors and not the DB. It acted on its own motion in cases involving misconduct under s 94 of the LPA. In other cases warranting disciplinary action the DB acted on complaints made to it by, inter alia, the Bar Council. It was thus beyond doubt that the Malaysian Bar was the guardian of professional conduct and etiquette of advocates and solicitors (see para 16).

(3) (per **Augustine Paul FCJ**) It was the Bar Council that would be a 'party aggrieved' for the purpose of an appeal under s 103E of the LPA and not the DB. The DB could not therefore be a party to an appeal. This right was that of the Bar Council alone. However, s 103E(4) of the LPA might appear to restrict the power of the Bar Council to only intervening in an appeal and not to initiate one. That would indeed be the position if the sub-s was read on its own without reference to the other parts of the section thereby resulting in an anomaly. It is a rule of statutory interpretation that a section must be read as a whole (see para 16).

(4) (per **Augustine Paul FCJ**) Section 103E(1) and (3) of the LPA clearly give the Bar Council the right to appeal. Read in this context s 103E(4) of the LPA must be construed as a reference to a situation where the Bar Council was not already a party to the appeal. This interpretation was consistent with the other provisions of s 103E of the LPA and the role and function of the Bar Council (see para 17).

(5) (per **Augustine Paul FCJ**) The fact that the DB was not a 'party aggrieved' for the purpose of s 103E of the LPA was not the end of the matter. An order for costs had been made against it by the High Court. That made it a 'party aggrieved' on the authority of *R v Surrey Quarter Sessions Appeal Committee, Ex p Lilley* [1951] 2 All ER 659 (see para 18).

(6) (per **Nik Hashim FCJ**) As to whether the DB was a party aggrieved, it appeared that s 103E(3) of the LPA conferred a right of appeal to any party aggrieved by the decision of the High Court. And since the DB

was made a party by the first respondent before the High Court and the interests of the DB had been prejudicially affected by the order of costs against the DB by the decision of the High Court, the DB was a party aggrieved and was therefore entitled to appeal to the Federal Court against the High Court's decision (see para 24); *Cook v Southend Borough Council* [1990] 1 All ER 243 CA.

(7) (per **Abdul Aziz Mohamad FCJ**, dissenting) Against the legislative backdrop of the LPA and the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994, disciplinary proceedings against an advocate and solicitor were adversarial in nature and therefore the 'party aggrieved' in s 103E of the LPA must refer to one of the adversaries, which in this case, must be the complainant, who was the second respondent here, and could not be the adjudicating DB itself (see para 25).

(8) (per **Abdul Aziz Mohamad FCJ** dissenting).The DB's reasons for claiming to be a 'party aggrieved' under sub-s (3) of s 103E of the LPA were unacceptable. Further it was clear from s 99 that the DB only acts on a complaint that was made or referred to it. But it did not make the DB the person, who 'represents the collective conscience of the standards of professional conduct and etiquette' of advocates and solicitors or 'acts as protector of the purity and dignity of the profession'. The person who met that description was the Bar Council, which, under sub-s (1) of s 47 of the LPA, was responsible for the proper performance of the functions of the Malaysian Bar (see para 28).

[Bahasa Malaysia summary

Wong Weng Woh, responden kedua, rakan kongsi kanan sebuah firma undang-undang mengemukakan aduan terhadap Hoo Lin Coln, responden pertama, kepada lembaga tatatertib Majlis Peguam (LT) pada 17 November 2000 selepas aduan pertama oleh seorang anak guam ditarik balik. Satu siasatan telah dikendalikan oleh tribunal siasatan yang mencadangkan tiada tindakan diambil terhadap responden pertama. Walau bagaimanapun, LT meneruskan untuk melantik jawatankuasa tatatertib (JT) untuk membuat siasatan rasmi terhadap aduan tersebut. Di akhir pendengaran, JT mencadangkan bahawa responden pertama digugurkan dari daftar peguam dan LT bersetuju dengan keputusan tersebut. Responden pertama kemudian merayu ke Mahkamah Tinggi terhadap perintah tersebut. Mahkamah Tinggi membenarkan rayuan tersebut dengan kos. Kemudian LT merayu ke Mahkamah Persekutuan terhadap perintah yang dibuat. Semasa permulaan perbicaraan rayuan ini responden pertama membangkitkan bantahan awalan mempersoalkan sama ada perayu, LT, kompeten untuk membuat rayuan tersebut sebagai pihak yang terkilan dalam maksud s 103E Akta Profesion

Undang-Undang 1976 ('APU'). Responden pertama menghujah bahawa LT tidak mempunyai kuasa untuk membuat rayuan ini. Dalam menyokong dia menyatakan bahawa: (i) APU tidak memberi kuasa kepada LT untuk membuat apa-apa selain daripada mengadili aduan dan selepas berbuat demikian menjadi functus officio dengan peranannya dalam prosiding yang kemudian sebagai hanya amicus curiae; (ii) LT bukan 'party aggrieved' dalam maksud s 103E APU; dan (iii) LT sebagai perayu menjadi plaintif dan hakim pada masa yang sama yang menyebabkan konflik dengan peraturan keadilan semulajadi bahawa tidak ada orang yang boleh menghakimi tindakannya sendiri. LT menghujah ia mempunyai hak untuk merayu.

Diputuskan, menolak bantahan awalan tanpa perintah untuk kos:

(1) (oleh **Augustine Paul HMP**) Maksud yang perlu diberikan kepada pernyataan 'person aggrieved' akan bergantung kepada konteks tujuan dan peruntukan statut dalam persoalan. Rasional yang mendasari tafsiran luas pernyataan 'person aggrieved' yang memberikan tribunal statutori hak untuk merayu adalah untuk melindungi kepentingan awam yang mereka mempunyai kewajipan terikat untuk mengesahkan. (lihat perenggan 14); *College of Dental Surgeons v Findlay* 2000 BCTC Lexis 1574).

(2) (oleh **Augustine Paul HMP**) Kepentingan yang sebegitu, yang melibatkan peguamcara dan peguambela, adalah diamanahkan kepada Badan Peguam Malaysia oleh s 42 APU. Ia adalah jelas daripada s 42 bahawa Majlis Peguam yang telah diamanahkan dengan tugas untuk mengekalkan standard dan tingkah laku peguamcara dan peguambela dan bukan LT. Ia bertindak atas keputusannya sendiri dalam kes-kes yang melibatkan salah laku di bawah s 94 APU. Dalam kes-kes lain yang mewajarkan tindakan disiplin, LT bertindak atas aduan yang dibuat kepadanya oleh, antara lain, Majlis Peguam. Oleh itu, tidak ragu-ragu bahawa Badan Peguam Malaysia adalah penjaga tingkah laku profesional dan etika peguambela dan peguamcara (lihat perenggan 16).

(3) (oleh **Augustine Paul HMP**) Ia adalah Majlis Peguam yang akan menjadi 'party aggrieved' bagi tujuan rayuan di bawah s 103E APU dan bukan LT. LT, oleh itu tidak boleh menjadi pihak kepada rayuan. Hak ini adalah milik Majlis Peguam sahaja. Walau bagaimanapun, s 103(4) APU mungkin cuba menghalang kuasa Majlis Peguam kepada hanya mencelah di dalam rayuan dan bukan memulakannya. Keadaan sedemikian akan terjadi jika subseksyen tersebut dibaca sendiri tanpa rujukan kepada bahagian-bahagian lain seksyen tersebut yang akan mengakibatkan kejanggalan. Ia adalah peraturan pentafsiran statutori bahawa sesuatu seksyen mesti dibaca secara menyeluruh (lihat perenggan 16).

(4) (oleh **Augustine Paul HMP**) Seksyen 103E(1) dan (3) APU jelas memberikan Majlis Peguam hak untuk merayu. Dibaca dalam konteks ini, s 103E APU mesti ditafsir sebagai rujukan kepada situasi di mana Majlis Peguam belum lagi menjadi pihak kepada rayuan tersebut. Pentafsiran ini adalah konsisten dengan peruntukan-peruntukan lain s 103E APU dan peranan dan fungsi Majlis Peguam (lihat perenggan 17).

(5) (oleh **Augustine Paul HMP**) Fakta bahawa LT bukan 'party aggrieved' bagi tujuan s 103E APU bukan penghujung perkara tersebut. Perintah untuk kos telah dibuat terhadapnya oleh Mahkamah Tinggi. Ia menjadikannya 'party aggrieved' atas autoriti *R v Surrey Quarter Sessions Appeal Committee*, *Ex p Lilley* [1951] 2 All ER 659 (lihat perenggan 17).

(6) (oleh **Nik Hashim HMP**) Sama ada LT adalah pihak yang terkilan, jelas bahawa s 103E(3) APU memberikan hak untuk merayu kepada mana-mana pihak yang terkilan oleh keputusan Mahkamah Tinggi. Dan, oleh kerana LT telah dijadikan pihak oleh responden pertama di Mahkamah Tinggi, dan kepentingan LT telah diprejudis dengan perintah untuk kos, LT adalah pihak yang terkilan dan oleh itu berhak untuk merayu ke Mahkamah Persekutuan terhadap keputusan Mahkamah Tinggi tersebut (lihat perenggan 24); *Cook v Southend Borough Council* [1990] 1 All ER 243 CA).

(7) (oleh **Abdul Aziz Mohamad HMP**, menentang) Bertentangan dengan latar belakang undang-undang APU dan Peraturan-Peraturan Profesion Undang-Undang (Prosiding Tatatertib) (Tribunal Penyiasatan dan Jawatankuasa Tatatertib) 1994, prosiding tatatertib terhadap seseorang peguambela dan peguamcara adalah bersifat berlawanan dan oleh itu 'party aggrieved' di dalam s 103E APU mesti merujuk kepada salah satu lawan, yang mana dalam kes ini, adalah pengadu, yang merupakan responden kedua, dan tidak boleh menjadi LT yang menghakimi dirinya sendiri (lihat perenggan 25).

(8) (oleh **Abdul Aziz Mohamad HMP**, menentang) Alasan-alasan oleh LT untuk menuntut menjadi 'party aggrieved' di bawah sub-s (3) s 103E APU tidak boleh diterima. Selanjutnya, ia adalah jelas dari s 99 bahawa LT hanya bertindak atas aduan yang dibuat atau dirujuk kepadanya. Tetapi ia tidak menjadikan LT orang yang 'represents the collective conscience of the standards of professional conduct and etiquette' peguambela dan peguamcara atau 'acts as protector of the purity and dignity of the profession'. Pihak yang memenuhi gambaran tersebut adalah Majlis Peguam, yang mana, di bawah sub-s (1) s 47 APU, bertanggungjawab terhadap pelaksanaan yang wajar fungsi-fungsi Badan Peguam Malaysia (lihat perenggan 29).]

Notes

For cases on disciplinary board, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1589–1590.

Cases referred to

Attorney-General of the Gambia v Pierre Sarr N'Jie [1961] AC 617 (refd)
Bar Council of Maharashtra v MV Dabholkar AIR 1975 SC 2092 (refd)
College of Dental Surgeons v Findlay [2000] BCTC Lexis 1574 (refd)
Cook v Southend Borough Council [1990] 1 All ER 243 (refd)
Ex p Sidebotham, Re Sidebotham (1880) 14 Ch D 458 (refd)
Jennings v Kelly [1939] 4 All ER 464 (refd)
Jerald Allen Gomez v Shencourt Sdn Bhd Majlis Peguam (Intervenor) [2006] 2 CLJ 343 (refd)
R v London Sessions Appeal Committee, Ex parte Westminster City Council [1951] 1 All ER 1032 (refd)
R v Surrey Quarter Sessions Appeal Committee, ex p Lilley [1951] 2 All ER 659 (folld)

Legislation referred to

Advocates Act 1961 [India] s 38
Legal Profession Act 1976 ss 42, 42(1)(b), 47(1), 57, 57(b), 57(c), 93, 93(1), 93(2), 94, 94(1), 99, 99(3), 103E, 103E(1), 103E(3), 103E(4), Part VII
Legal Profession (Amendment) Act 1992
Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 rr 8(1), 23

Appeal from: Civil Appeal No R-17B–28 of 2005 (High Court, Kuala Lumpur)

DP Naban (Nitin Nadkarni with him) (Lee Hishamuddin Allen & Gledhill) for the appellant.
Gurbachan Singh (Harjinder Singh & Amrit Pal Singh with him) (Harjinder Singh) for the first respondent.
Jagjit Singh (Jagjit Singh & Co) for the second respondent.

Augustine Paul FCJ:

[1] At the commencement of the hearing of this appeal the first respondent raised a preliminary objection questioning the competency of the appellant, the Disciplinary Board of the Bar Council ('the DB'), to bring the appeal as a party aggrieved within the meaning of s 103E of the Legal Profession Act 1976 ('the LPA').

[2] In order to appreciate the objection raised it is necessary to set out an

outline of the relevant facts of the case. One Hoo Lin Coln joined the legal firm of Messrs Manjit Singh Sachdev, Mohammad Radzi & Partners ('MSSMR') as a legal assistant on 8 May 1998 to build up the intellectual law section of the firm and left on 15 July 2000 to set up his own practice. When he was with MSSMR he was introduced by the senior partner of the firm, Dato Manjit Singh Sachdev, to Khaw Jau Hong of Syarikat Kiew Brothers ('SKB'). He was instructed to handle SKB's trademark application with the trademark office in Kuala Lumpur. As a result of certain problems that SKB had with Hoo Lin Coln a complaint was lodged by it against him with the Bar Council which was subsequently withdrawn. This was confirmed by the Bar Council. Being dissatisfied Wong Weng Woh, a senior partner of MSSMR, lodged a fresh complaint to the DB on 17 November 2000. An inquiry was conducted by the investigating tribunal which recommended that no action be taken against Hoo Lin Coln. However, the DB proceeded to appoint a disciplinary committee ('the DC') to conduct a formal investigation into the complaint by calling witnesses. At the conclusion of the hearing the dc recommended that Hoo Lin Coln be struck off the roll and the DB concurred with it. Hoo Lin Coln then appealed to the High Court against the order made with Wong Weng Woh as the first respondent and the DB as the second respondent. The High Court allowed the appeal with costs. The DB appealed to this court against the order made with Hoo Lin Coln as the first respondent and Wong Weng Woh as the second respondent.

[3] The objection raised by learned counsel for Hoo Lin Coln, the first respondent, was that the DB has no power to bring this appeal. In support he said that:

(a) the LPA does not authorise the DB to do anything besides adjudicating on a complaint and having done so became functus officio with its role in subsequent proceedings being only as amicus curiae;

(b) the DB is not a 'party aggrieved' within the meaning of s 103E of the LPA; and

(c) the DB being an appellant makes it a suitor and judge at the same time thereby conflicting with the rule of natural justice that no man shall be a judge in his own cause.

[4] In its reply the DB, in reliance on various authorities to which reference will be made later, contended that it has a right to appeal.

[5] The crux of the preliminary objection is thus whether the DB is competent to appeal within the meaning of s 103E of the LPA which deals with the right of a person to appeal. The section reads as follows:

(1) Any party aggrieved by any decision or order made by a Disciplinary Board shall have the right to appeal to the High Court within one month of notification of the decision or order complained against.

(2) The appeal shall be fixed for hearing before three Judges of the High Court.

(3) Any party aggrieved by the decision of the High Court shall have the right to appeal to the Supreme Court within one month of the decision of the High Court.

(4) The Bar Council may in its discretion intervene at any stage of any appeal under this section.

[6] A person who is competent to appeal is a 'party aggrieved' by a decision of the DB or the High Court. Thus what requires to be answered in order to resolve the objection raised is the proper meaning to be accorded to the expression in the section. This will explain the competency of persons of their right of appeal within the meaning of s 103E of the LPA.

[7] It is necessary to pause for a moment and consider whether there is any difference between the expression 'person aggrieved', as found in the foreign authorities which will soon be referred to and 'party aggrieved', as appearing in s 103E of the LPA. In ascertaining the meaning of the two expressions reference may be made to the definition of 'party aggrieved' in *Black's Law Dictionary* 8th Ed at p 1154:

> *party aggrieved*. See aggrieved party. *aggrieved party*. A party entitled to a remedy; esp, a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. Also termed *party aggrieved; person aggrieved*.

[8] And *Butterworths Australian Legal Dictionary* in defining the word 'party' says at p 852:

> 1 … 2. A participant in a transaction or in legal action or proceedings. 3. A plaintiff, defendant, or any person against whom a claim for relief is made: for example (NSW) Supreme Court Act 1970 s 19. 4. In relation to a legal proceeding, a party on the record:*R v Murray & Cormie, Ex parte Commonwealth* (1916) 22 CLR 437 at p 469. 5. In relation to an appeal, a direct party or a person who is entitled to be heard because he or she has a sufficient interest in the appeal: *Claridge Pty Ltd v Metropolitan Region Planning Authority* (No1) 4 APA 334.

[9] It follows that there is no difference in the meaning of both the expressions. They carry the same meaning.

[10] In *R v London Sessions Appeal Committee, Ex parte Westminster City Council* [1951] 1 All ER 1032 Lord Goddard CJ said that the best definition of the expression 'person aggrieved' is in *Ex p Sidebotham, Re Sidebotham* (1880) 14 Ch D 458 where James LJ said at p 465:

> But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.

[11] The position in England has now changed. As Drost J observed in *College of Dental Surgeons v Findlay* [2000] BCTC Lexis 1574:

> However, the law of England has changed since then. That narrow interpretation of a 'person aggrieved' is no longer accepted. The tide began to turn with the judgment of Lord Denning in *Attorney General of the Gambia v N'Jie* [1961] 2 All ER 504, where, at p 511, he said:
>
> > The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests.

[12] In *Cook v Southend Borough Council* [1990] 1 All ER 243 Woolf LJ traced the history leading to the current position at pp 247–253:

> The numerous authorities which were cited to us can be conveniently considered in three groups. The first group covering the period up to 1951, the second group the period up to 1961 and the third the cases decided thereafter.
>
> *The pre-1951 authorities*
>
> The starting point is *Ex p Sidebotham, re Sidebotham* (1880) 14 Ch D 458; [1874-80] All ER Rep 588. That was a decision of the Court of Appeal on an appeal from Bacon CJ following a decision of a county court judge not to act on a report by the comptroller in bankruptcy that the trustee in a bankruptcy had been guilty of misfeasance, neglect or remission by which an estate had sustained a loss which the trustee ought to make good. The comptroller did not appeal but the bankrupt did and in the Court of Appeal James LJ pointed out that in the proceedings neither the trustee nor the comptroller were in fact litigants (14 Ch D 458 at p 465, [1874-80] All ER Rep 588 at p 590): 'It is not a lawsuit either in form or in substance between the comptroller and the trustee.' This would have been a sufficient ground for the decision, but James LJ went on to say:

> But, the judge having come to a conclusion, rightly or wrongly, that he ought not to make any order on the comptroller's report, there ought not to be any appeal from his decision. There is nothing to form the ground of an appeal. It is said that any person aggrieved by any order of the court is entitled to appeal. But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.

Later James LJ pointed out that if there had been any misfeasance on the part of the trustee the bankrupt or any creditor had their own right to apply to the court (see 14 Ch D 458 at p 466 [1874-1880] All ER Rep 588 at p 591).

Bramwell LJ expressed himself in rather different terms, saying (14 Ch D 458 at 466, [1874-1880] All ER Rep 588 at 591):

> … the general rule is that an appeal must be by the party who has endeavoured to maintain the contrary of that which has taken place. It is not so much that there is a disability on the part of the bankrupt to appeal, as that no one but the comptroller is entitled to appeal.

It will be appreciated that as the bankrupt was not a party to the proceedings in *Ex p Sidebotham* that case could be distinguished from this case and applying the approach adopted by Bramwell LJ the council in this case would be a person aggrieved since the council is 'the party who has endeavoured to maintain the contrary of that which has taken place'. The problem from the council's point of view arises however because of the general statement made by James LJ as to who is a person aggrieved.

The passage I have cited from the judgment of James LJ was considered by the Court of Appeal in *Ex p Official Receiver, re Reed Bowen & Co* (1887) 19 QBD 174. In that case a Court of Appeal presided over by Lord Esher MR held by a majority that where an immediate adjudication of bankruptcy against a debtor has been refused or adjourned the official receiver is a 'person aggrieved' by the order and is therefore entitled to appeal. In his judgment Lord Esher MR said, with regard to the passage from the judgment of James LJ (at p 178):

> This is not an exhaustive definition, but it is an affirmative definition of a person who may appeal, and at all events it includes a person who has asked for a decision for which he had a right to ask, and has been wrongfully refused.

Lord Esher MR then cited the judgment of Bramwell LJ, and added:

> That seems to me to be to the same effect as part of the definition of James LJ, and it means that where there are two parties to the application — the one applying, the other asking that the application may be refused — one of them as endeavoured to maintain the contrary of that which has taken place, and, according to this definition, he is a party against whom a decision has been given,

A and, according to both definitions, he has a right to appeal, on the ground that he is legally a 'person aggrieved' by the decision, being in the same position as a party to a litigation.

B The fact that Lord Esher MR did not consider that there was really any distinction between the approach adopted by James and Bramwell LJJ makes it clear that Lord Esher MR was, if not placing a gloss on the words used by James LJ, interpreting them very widely indeed. The same wide interpretation of the language of James LJ was adopted by Lopes LJ and he regarded the official receiver as being a person aggrieved because, using James LJ's test:

C the official receiver has been 'wrongfully deprived of something' here: he has been wrongfully deprived in not having an application granted which he was entitled to make.

(See 19 QBD 174 at p 181–182.)

D The next case to which reference should be made is *R v London County Keepers of the Peace and Justices* [1890] 25 QBD 357, sub nom *R v London Justices, ex p Fulham Vestry* [1886-1890] All ER Rep 537. In that case a summons under s 72 of the Highway Act 1835 against a person for willfully obstructing a highway had been dismissed by a justice and the authority wished to appeal under s 105, which provided:

E … if any person shall think himself aggrieved by … any Order, Conviction, Judgment, or Determination made, or by any Matter of Thing done, by any Justice … such Person may appeal to … Quarter Sessions …

F It was held that there was no appeal against the acquittal of the accused. In his judgment Lord Coleridge CJ pointed out that it was the first time that a claim was being made to have an appeal after an acquittal and he went on to say that he did not deny there was a 'determination made' by the justice' (see 25 QBD 357 at pp 359–360, [1886-90] All ER Rep 537 at p 538). However, Lord Coleridge CJ added (25 QBD 357 at p 360, cf [1886-90] All ER Rep 537 at p 538):

G … our decision must be governed by broad and well-recognised principles of construction. One of those is, that a man acquitted is not to be again proceeded against with respect to the same matter; another principle is that an appeal is never given except by statute.

H He then went on to examine the language of s 105 of the 1835 Act and came to the conclusion that it showed that the object of the legislature was to give an appeal where a person had something done against him which aggrieved or affected him. He then added (25 QBD 357 at 361, cf [1886-90] All ER Rep 537 at 538):

I Is a person who cannot succeed in getting a conviction against another a person 'aggrieved'? He may be annoyed at finding that what he thought was a breach of law is not a breach of law; but is he 'aggrieved' because some one is held not have done wrong? It is difficult to see that the section meant anything of that kind. The section does not give an appeal to anybody but a person who is by the direct act of the magistrate 'aggrieved' – that is, who has had something done or determined against him by the magistrate.

It will be seen that in later decisions the approach of Lord Coleridge CJ is regarded as justifying a narrower interpretation of who is a person aggrieved. However, in my view the approach of Lord Coleridge CJ is fully explained by the fact that he was dealing with a criminal case, which involves the general principle that there is ordinarily no right of appeal against an acquittal. As was pointed out in *Benson v Northern Ireland Road Transport Board* [1942] 1 All ER 465; [1942] AC 520, a case not referred to in argument, and a decision of the House of Lords in which *R v London County Keepers of the Peace and Justices* was cited, it would need very clear statutory language to establish an exception to the general rule that there is no right of appeal from a decision dismissing a criminal charge. Such clear language is now provided by s 111 of the Magistrates' Courts Act 1980, which deals with appeals by case stated by magistrates, but this clear language was not contained in s 105 of the Highway Act 1835, the statutory provision which was being considered by the Divisional Court in *R v London County Keepers of the Peace and Justices.*

I should now refer to *Sevenoaks UDC v Twynam* [1929] 2 KB 440. That case was concerned with the right of appeal given by s 68(3) of the Public Health Act 1925. It is not necessary to consider the case in detail. It is sufficient to say that both Lord Hewart CJ and Avory J applied the approach of Lord Esher MR and Lopes LJ in *Ex p Official Receiver*, *re Reed Bowen & Co* (1887) 19 QBD 174. The decision in *Twynam*'s case was approved and applied by the House of Lords in *Jennings v Kelly* [1939] 4 All ER 464; [1940] AC 206. In that case the House of Lords held that the appellants, who had unsuccessfully opposed the grant of a liquor licence and who had made an application to the High Court for an order of certiorari which had come before the High Court and then the Court of Appeal, were persons aggrieved by a decision of the Court of Appeal for Northern Ireland. This was in proceedings by way of certiorari and the consequence was that they were entitled to appeal to the House of Lords under s 49 of the Government of Ireland Act 1920. On the question of the appellants' locus standi, the leading speech was delivered by Lord Wright. He said [1939] 4 All ER 464 at pp 473-474; [1940] AC 206 at pp 223-224):

> The appellants, being duly served, appeared before the King's Bench Division and succeeded in showing cause to the contrary, and were awarded their costs. In appearing in these circumstances, they could not, in my opinion, be regarded as merely officious, quite apart from their right to object in the licensing proceedings …. Notice of appeal was then served upon them through their solicitor. They appeared, and were represented by counsel, before the Court of Appeal, but the appeal was allowed, and they were ordered to pay the costs …. No objection throughout was taken to the appellants taking the steps which they did in the certiorari proceedings. It is not necessary here to decide whether the mere fact that they had a statutory right to object in the proceedings before the licensing authority would constitute them parties interested in the proceedings by way of certiorari. They were treated throughout, however, as competent parties in these proceedings. Notices were served upon them as being proper parties. Orders were made in their favour and against them. It would be strange indeed if, in these circumstances, they were debarred from seeking to have restored the order made in their favour by the King's Bench Division, or to secure a reversal of the adverse order of the Court of Appeal. *It would not*, *I think, be right to treat the matter simply from the standpoint of costs*, but, even if it were so treated, I think that the appellants should succeed on the preliminary objection. In my opinion, the appellants were

A clearly aggrieved by being ordered to pay costs, and their right of appeal was complete merely on this limited ground.

(Emphasis added.)

B Viscount Maugham expressly agreed with the speech of Lord Wright and clearly reached the conclusion that the appellants had the necessary locus standi on the dual grounds that the appellants had been treated as objectors and had been ordered to pay costs. It is important, having regard to the later authorities to which I have to refer, to note that Lord Wright was not treating each appellant as a person aggrieved only because he had been ordered to pay costs. This was merely an additional factor to the C other matter on which Lord Wright relied, namely, the fact that the appellants had been throughout parties to the proceedings. That this is the position is made clear by the fact that Lord Wright expressly said that the decision in *Sevenoaks UDC v Twynam* [1929] 2 KB 440 was right and went on to say 'The facts of the present case are stronger', by implication then referring to the order for costs (see [1939] 4 All ER 464 at p 475;[1940] AC 206 at p 225).

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The 1951 to 1960 cases

It was during this period that the Divisional Court laid down a restrictive approach to who is a 'person aggrieved' for the purposes of an appeal in non-criminal cases. The source of this approach, which contaminated the later decisions to which it is E necessary to refer, is *R v London Sessions Appeal Committee ex p Westminster City Council* [1951] 1 All ER 1032; [1951] 2 KB 508. That case involved the decision of the magistrate on an appeal reversing the decision of the city council to cancel the registration of a street trader under s 25 of the London County Council (General Powers) Act 1947 (10 & 11 Geo 6 c xlvi). The city council wished to appeal against F that decision to quarter sessions under s 64 of the 1947 Act which gave a right of appeal to 'Any person deeming himself aggrieved by any conviction or order by a court of summary jurisdiction under any provision of this Act ….' The Divisional Court held that the city council was not a person aggrieved in relation to the order which had been made by the magistrate that their decision 'be reversed'. Lord Goddard CJ in giving his reasons for coming to this conclusion, in addition to G relying on an obiter statement which he had made in *Stepney BC v Joffe* [1949] 1 All ER 256; [1949] 1 KB 599 that he did not think the borough council would have a right of appeal, relied on James LJ's judgment in *Ex p Sidebotham, re Sidebotham* (1880) 14 Ch D 458, ; [1874-1880] All ER Rep 588 and *R v London County Keepers of the Peace and Justices* (1890) 25 QBD 357; [1886-1890] All ER Rep 537. However, H Lord Goddard CJ was not referred to the views of Lord Esher MR, or to the decision of the House of Lords in *Jennings v Kelly* [1939] 4 All ER 464; [1940] AC 206. Not having been referred to those authorities, Lord Goddard CJ said [1951] 1 All ER 1032 at p 1033; [1951] 2 KB 508 at p 511):

I In view of the structure of the Act and the expressions used in the earlier sections, if it had been intended to give a borough council an appeal, I should have expected that the Act would have said: 'Any person or any borough council deeming themselves aggrieved.' Secondly, I do not think that it can be said that, because the borough council's decision has been reversed by the magistrate, that that makes the borough council a person aggrieved for the purpose of s 64.

Shortly after the *Westminster City Council* case was decided, another 'person aggrieved' case came before the Divisional Court presided over by Lord Goddard CJ. This was *R v Surrey Quarter Sessions Appeal Committee, ex p Lilley* [1951] 2 All ER 659; [1951] 2 KB 749. *Ex p Lilley* involves the same section as arises for consideration on this appeal, namely s 301 of the Public Health Act 1936. It arose out of the decision of the Surrey county council to impose certain conditions in respect of an application to be registered under the Nurseries and Child-Minders Regulation Act 1948. The applicant objected to the conditions and therefore appealed to the justices who decided that the Act did not apply to her premises and accordingly that the county council had no power to make the order against which the applicant appealed. The justices therefore allowed the appeal and awarded the applicant 15 guineas costs against the county council. The county council then sought to appeal to quarter sessions and it was argued before quarter sessions and the Divisional Court that the county council had no right of appeal because they were not a person aggrieved by the decision of the court of summary jurisdiction. On this occasion the decision of the House of Lords in *Jennings v Kelly* [1939] 4 All ER 464; [1940] AC 206 was cited and on the basis of that decision Lord Goddard CJ distinguished his earlier decision in *Ex p Westminster City Council* because, as in *Jennings v Kelly*, an order for costs had been made. He also distinguished his earlier decision with regard to the question of whether the county council was a person for the purposes of s 301. He referred to s 19 of the Interpretation Act 1889 which provides that the word 'person' in any Act of Parliament shall include any body of persons corporate or incorporate unless an intention appears to the contrary and expressed the view that while the private Act which was being considered in the *Westminster City Council* case indicated a contrary view, no contrary view was disclosed by the 1936 Act. Though he added that he had 'intended [in the *Westminster* case] principally to found my judgment on the point that the person there was not a person 'aggrieved' ' (see [1951] 2 KB 749 at p 755, cf [1951] 2 All ER 659 at p 663). Thus was established what I would regard as the heresy that in relation to s 301 of the 1936 Act and similar statutory provisions, a local authority can appeal when it would not otherwise be able to do so if it is ordered to pay costs. The quality of this ground for decision had been considered earlier by Viscount Simon LC in*Benson v Northern Ireland Road Transport Board* [1942] 1 All ER 465 at p 467;[1942] AC 520 at p 525 when he said:

> … the proposition that it is the imposition of costs on the prosecutor that creates his right to appeal would lead to the extraordinary result that in Northern Ireland, when a court of summary jurisdiction dismisses a criminal charge, the prosecution, if dissatisfied, should beg to be ordered to pay costs in order thereby to purchase a right of appeal, and the accused, if he wished to make sure of his acquittal, should be astute not to ask for costs against the prosecution.

Unfortunately, the comments of Viscount Simon LC were not drawn to the attention of the Divisional Court who were also not made aware of the views of Lord Esher MR in relation to the test pronounced by James LJ.

The same issue again came before the Divisional Court presided over by Lord Goddard CJ just under a year later when that court had to consider *R v Nottingham Quarter Sessions, ex p Harlow* [1952] 2 All ER 78; [1952] 2 QB 601. This case also

involves the right of appeal under s 301 of the 1936 Act. The local authority had served a notice on the owner or occupier of premises requiring the provision of a dustbin but the magistrates set aside the notice without making an order for costs against the local authority. The local authority wanted to appeal and it was held that the local authority was entitled to do so as a person aggrieved since as a result of the absence of the dustbin a legal burden had been placed on them in consequence of the decision of the magistrates and they had to carry out their duty in a different way from that which they would otherwise have done. On this occasion the comments of Lord Esher MR were drawn to the attention of the court and *Sevenoaks UDC v Twynam* [1929] 2 KB 440 was also referred to. A reserved judgment of the court was delivered by Parker J. The question whether the council was 'a person' the court regarded as being concluded in favour of the council by *R v Surrey Quarter Sessions Appeal Committee, ex p Lilley* [1951] 2 All ER 659; [1951] 2 KB 749. On the issue whether the council was 'a person aggrieved', Parker J referred to comments which Lord Hewart CJ had made in *Twynam*'s case about considering the language of the particular statute giving the right of appeal. Parker J then went on to say [1952] 2 All ER 78 at p 80; [1952] 2 QB 601 at 605):

> Prima facie, a local authority who have either gone to a court of summary jurisdiction as complainants, or have been brought before such a court as defendants to a complaint, and have failed are, one would have thought, in common parlance, 'a person aggrieved'.

The judge distinguished both the *Westminster City Council* and the *Lilley* cases, without indicating any disapproval, on the basis that the decision in these cases against which the council wished to appeal 'cast no legal burden on the city council' (see [1952] 2 All ER 78 at pp 80–81; [1952] 2 QB 601 at p 606).

It is then necessary to refer to *Ealing BC v Jones* [1959] 1 All ER 286; [1959] 1 QB 384 This is again a decision of the Divisional Court, Lord Parker CJ now presiding. The case concerns an enforcement notice served by the local planning authority against the service of which there had been a successful appeal to the magistrates' court. The authority appealed to quarter sessions who regarded the authority as a person aggrieved and reversed the decision of the magistrates. There was, as in this case, then a further appeal by way of case stated to the Divisional Court, who took the view that the authority was not a person aggrieved by the decision of the magistrates because no legal burden had been placed on the authority as a result of the magistrates' decision. The Divisional Court left open the question whether the authority was to be treated as a 'person'. Lord Parker CJ in coming to his decision complained about Parliament continuing to use the expression 'person aggrieved' but then went on to apply the full vigour of Lord Goddard CJ's judgment in *Ex p Westminster City Council* and made it clear that in his view a legal burden had to be placed on the public body by a decision before that body could be held to be a person aggrieved. Lord Parker CJ also commented that he would expect Parliament, if it had intended the local planning authority to be able to appeal, to have said so in clear terms. Donovan J while agreeing with the judgment of Lord Parker CJ significantly indicated what would have been his reaction in the absence of previous authority [1959] 1 All ER 286 at 289; [1959] 1 QB 384 at p 392):

> ' … without reference to judicial authority one would say that the words [person aggrieved by a decision] meant no more than a person who had the decision given against him; but the courts have decided that the words mean more than that and have held that the word 'aggrieved' is not synonymous in this context with the word 'dissatisfied.'

I turn next to *R v Dorset Sessions Appeal Committee, ex p Weymouth Corp* [1960] 2 All ER 410; [1960] 2 QB 230. This case also involved the rights of a planning authority to appeal against the quashing of an enforcement notice. It also came before the Divisional Court presided over by Lord Parker CJ. On this occasion Lord Parker CJ decided the question which he had left open in *Ealing BC v Jones* [1959] 1 All ER 286; [1959] 1 QB 384, which was whether the local planning authority was a person in relation to the power of appeal given to a 'person aggrieved'. The distinction between this case and Jones's case is that in this case there had been an order for costs made against the planning authority. In giving his reasons for coming to the conclusion that the local planning authority was not 'person' notwithstanding s 19 of the Interpretation Act 1889 (now the Interpretation Act 1978) Lord Parker CJ commenced by accepting it as being clear that a local planning authority could not claim to be aggrieved merely because an enforcement notice had been quashed. He was bound by the authorities to which I have referred. He then went on to say that he found this question very difficult and gave as his reasons for coming to the conclusion that Parliament had evinced an intention to the contrary for the purposes of the Interpretation Act the fact that it seemed to him 'absurd in the extreme that they [the planning authority] should have such a right [that is the right of appeal] by the mere incidence of having had an order for costs made against them' (see [1960] 2 All ER 410 at p 412; [1960] 2 QB 230 at p 240). This being the basis of the decision in *Ex p Lilley*, Lord Parker CJ then went on to adopt the reasoning in *Ex p Westminster City Council*.

That is the last of the second group of authorities to which I wish to refer. Although there have been many other cases dealing with who is a person aggrieved, since that time, as far as I am aware, the correctness of the decisions which I have cited have not been doubted so far as the circumstances which were being considered in each case are concerned. The courts in deciding whether or not a public body is a person aggrieved have continued to adopt the narrow interpretation of a person aggrieved laid down by the Divisional Court in *Ex p Westminster City Council*, notwithstanding the recognition both by Parker and Donovan JJ that this involved departing from the ordinary meaning of the words 'person aggrieved'. The consequence has been that narrow and technical distinctions between situations in which a public authority can and cannot appeal have continued to be drawn. A public body performing one function will be regarded as a person but when it is performing a different function it will not be regarded as a person. In some situations a public body will be able to appeal if an order for costs is made against it by magistrates; in others it will not. That this highly undesirable situation still exists is illustrated by the decision of the Divisional Court in *R v Southwark Crown Court, ex p Watts* (1989) 153 JP 666, reported after the conclusion of the argument in this case. In that case the Divisional Court felt compelled to follow *Ex p Westminster City Council* notwithstanding the submission that was made that had the court in *Ex p Westminster City Council* been referred to Lord Esher MR's comments in *Ex p Official Receiver, re Reed Bowen & Co* (1887) 19 QBD 174 the

decision might have been different. The result was that the Divisional Court felt bound to quash a decision of the Crown Court at Southwark to allow an appeal by Tower Hamlets London Borough Council against a decision of the magistrates to overturn the borough's decision to revoke a street trading licence. The Divisional Court considered that the court was compelled to adopt this approach although it meant that a different situation existed in Greater London from that outside Greater London where the different language of the Local Government (Miscellaneous Provisions) Act 1982 applied.

The post-1960 cases

The remaining authorities to which I should refer are only relevant in so far as they illustrate the fact that since the 1950s the courts have been progressively adopting a more generous interpretation of who is a 'person aggrieved'. The first case to which I would here refer is A-G of the *Gambia v N'Jie* [1961] 2 All ER 504; [1961] AC 617. In this case the Privy Council had to consider whether the Attorney–General, who had not appeared before the West African Court of Appeal when it had set aside a decision of a judge to strike *N'Jie* off the roll of those admitted to practice as a barrister and solicitor of the Supreme Court of the Gambia, had locus standi to appeal by special leave to the Privy Council. The Privy Council came to the conclusion that he did have locus standi. The opinion of the Privy Council was delivered by Lord Denning. Lord Denning referred to the test laid down by James LJ in *Ex p Sidebotham, re Sidebotham* (1880) 14 Ch D 458; [1874-1880] All ER Rep 588 and then went on to repeat Lord Esher MR's statement that ' … the definition of James LJ, is not to be regarded as exhaustive' and that:

> The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in thins which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interest.

(See [1961] 2 All ER 504 at 511; [1961] AC 617 at p 634).

If this is a correct statement of what should be the approach of the courts, then the approach adopted by the Divisional Court in *R v London Sessions Appeal Committee, ex p Westminster City Council* [1951] 1 All ER 1032; [1951] 2 KB 508 and those cases which followed that case is wrong.

[13] In *Bar Council of Maharashtra v MV Dabholkar* AIR 1975 SC 2092 Ray CJ in ruling that the Bar Council of a state is a person aggrieved to maintain an appeal against a decision of its disciplinary committee said at p 2097:

> 24. In finding out the meaning of the words 'person aggrieved by an order made by the disciplinary committee of the Bar Council of India', two features are to be kept in the fore-front. First, there is no lis in proceedings before the disciplinary committee. When the disciplinary

committee exercises the power to reprimand the advocates, or suspend the advocate from practice or remove the name of the advocate, the committee does not decide a suit between the parties. The Bar Council in placing a matter before the disciplinary committee does not act as prosecutor in a criminal case. A complainant who prefers a complaint against an advocate is not like a plaintiff in a civil suit. The complaint is examined by the Bar Council in order to find out whether there is any reason to believe that any advocate has been guilty of misconduct. The Bar Council may act on its own initiative on information which has come to its notice in the course of its duties. Second, there is no party to the disciplinary proceedings. It is because the Bar Council, the Attorney General, the Advocate-General, as the case may be, all act in protecting the interests of advocates, the interests of the public. In so acting there is no conflict between the advocate and any other person. The reason is that it is professional conduct, professional etiquette, professional ethics, professional morality, which are to be upheld, transgression of which results in reprimanding the advocate or suspending him from practice or removing his name from the roll.

25. With regard to the conduct of the advocates, the State Bar Council plays an important part, vis-à-vis the disciplinary committee constituted by the State Bar Council. First, under s 35(1A) of the Act the State Bar Council may either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of the State Bar Council. This indicates the watch that the State Bar Council has to keep. Its task does not cease on placing a matter before the disciplinary committee. This provision shows on one hand the abiding interest of the State Bar Council in the matter and on the other the duty of guarding the professional ethics with which it is entrusted. Second, under s 36(2) of the Act, a State Bar Council may make a report to the Bar Council of India to withdraw before the disciplinary committee of the Bar Council of India any proceeding for disciplinary action against any advocate pending before the disciplinary committee of a State Bar Council. These provisions indicate that after the State Bar Council has placed the matter before its disciplinary committee, the Bar Council continues its check on the proceedings. These courses of action are procedural. These steps do not give the State Bar Council any power to deal with the decisions of the disciplinary committee. The reason why the State Bar Council is empowered under the Act to withdraw proceedings from one disciplinary committee and give it to another or to have the disciplinary proceedings withdrawn from the State for determination by the disciplinary committee of the Bar

Council of India is that the State Bar Council is all the time interested in the task of preserving the profession against impurities in the standards of conduct. The Bar Council is the collective representative of the lawyers, the public, in regard to the observance of professional ethics by persons belonging to the noble profession.

26. The words 'person aggrieved' are found in several statutes. The meaning of words 'person aggrieved' will have to be ascertained with reference to the purpose and the provisions of the statute. Sometimes, it is said that the words 'person aggrieved' correspond to the requirement of locus standi which arises in relation to judicial remedies.

27. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words 'a person aggrieved' may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one 'a person aggrieved.' Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words 'a person aggrieved' is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words 'persons aggrieved' in ss 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words 'person aggrieved' include 'a person who has a genuine grievance because an order has been made which prejudicially affects his interest.' It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional

code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession. A

29. The interest of the Bar Council is to uphold standards of professional conduct and etiquette in the profession, which is founded upon integrity and mutual trust. The Bar Council acts as the custodian of the high traditions of the noble profession. The grievance of the Bar Council is to be looked at purely from the point of view of standards of professional conduct and etiquette. If any decision of the disciplinary committee of the Bar Council of India is according to the State Bar Council such as will lower the standards and imperil the high traditions and values in the profession, the State Bar Council is an aggrieved person to safeguard the interests of the public, the interests of the profession and the interests of the Bar. B C

30. The Bar Council is 'a person aggrieved' for these reasons. First, the words 'person aggrieved' in the Act are of wide import in the context of the purpose and provisions of the statute. In disciplinary proceedings before the disciplinary committee there is no lis and there are no parties. Therefore, the word 'person' will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is 'a person aggrieved' because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a disciplinary committee is entrusted with such inquiry. Once an inquiry starts the Bar Council has no control over its decision. The Bar Council may entrust it to another disciplinary committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. Fourth, a decision of a disciplinary committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to disciplinary committee the Bar Council in the performance of its functions under the Act is interested in the task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics. D E F G H I

31. For these reasons we hold that the Bar Council is an aggrieved person to maintain an appeal under the Act.

[14] It is therefore clear that the meaning to be accorded to the expression 'person aggrieved' would depend on the context of the purpose and provision of the statute in question. The rationale underlying the wider interpretation of the expression 'person aggrieved' to give statutory tribunals the right of appeal is to protect the public interest which they are duty bound to uphold (see *College of Dental Surgeons v Findlay* [2000] BCTC Lexis 1574). Thus cases such as *R v London Sessions Appeal Committee, ex p Westminster City Council* [1951] 1 All ER 1032 and *R v Surrey Quarter Sessions Appeal Committee, ex p Lilley* [1951] 2 All ER 659 which declared that the local councils which made the decision in question were not 'persons aggrieved' will now be decided differently in view of the public interest element involved in the exercise of their functions.

[15] Such an interest, in the case of advocates and solicitors, is entrusted to the Malaysia Bar by s 42 of the LPA. The section reads as follows:

(1) The purpose of the Malaysian Bar shall be —

(a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear for favour;

(b) to maintain and improve the standards of conduct and learning of the legal profession in Malaysia;

(c) to facilitate the acquisition of legal knowledge by members of the legal profession and others;

(d) where requested so to do, to express its view on matters affecting legislation and the administration and practice of the law in Malaysia;

(e) to represent, protect and assist members of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;

(f) to establish libraries and to acquire or rent premises to house the libraries and offices of the Malaysian Bar or amenities for the use of members either alone or in conjunction with any other body or society;

(g) to protect and assist the public in all matters touching ancillary or incidental to the law;

(h) to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors;

(i) to award prizes and scholarships and to establish and subsidise lectureship in educational institutions in subjects of study relating to law;

(j) to grant pecuniary or other assistance to any association, institute, board or society in Malaysia in the interest of the legal profession or of the law students;

(k) to afford pecuniary and other assistance to members or former members of the Malaysian Bar and to the wives, widows, children and other dependants, whether of members, former members or deceased members who are in need of any such assistance;

(l) to promote good relations and social intercourse amongst members and between members and other persons concerned in the administration of law and justice in Malaysia;

(m) to encourage, establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any local or international association and become a member thereof; and

(n) to establish a Compensation Fund.

(2) In addition to any other powers given by this Act, the Malaysian Bar may —

(a) purchase or lease any land or building required for any of the purpose of the Malaysian Bar;

(b) sell, surrender, grant, lease, exchange or alter any land or building as may be found most convenient or advantageous;

(c) borrow money whether by way of bank overdraft or otherwise for such of the purposes of the Malaysian Bar as the Malaysian Bar may from time to time consider desirable;

(d) make rules governing the manner of convening general meetings of the Malaysian Bar and the procedure thereat which rules shall be approved and may be amended by ordinary resolution at a general meeting of the Malaysian Bar; and

(e) do all such other thins as are incidental or conducive to the achievement or betterment of the purposes of the Malaysian Bar.

(3) In addition to any other rules that it may make under this Act the Malaysian Bar may make rules for giving effect to this Part.

[16] It is therefore clear that it is the Bar Council that has been entrusted with the duty of maintaining the standard and conduct of advocates and solicitors and not the DB. It acts on its own motion in cases involving misconduct under s 94 of the LPA. In other cases warranting disciplinary action the DB acts on complaints made to it by, inter alia, the Bar Council. It is thus beyond doubt that the Malaysian Bar is the guardian of professional

conduct and etiquette of advocates and solicitors. In this regard further reference may be made to paras 28, 29 and 30 of the judgment of Ray CJ, in *Bar Council of Maharashtra v MV Dabholkar* AIR 1975 SC 2092 reproduced earlier. Thus it is the Bar Council that will be a 'party aggrieved' for the purpose of an appeal under s 103E of the LPA and not the DB. The DB cannot therefore be a party to an appeal. This right is that of the Bar Council alone. However, s 103E(4) of the LPA may appear to restrict the power of the Bar Council to only intervening in an appeal and not to initiate one. That would indeed be the position if the subsection is read on its own without reference to the other parts of the section thereby resulting in an anomaly. It is a rule of statutory interpretation that a section must be read as a whole. In this regard reference may be made to *Bindra's Interpretation of Statutes* (7th Ed) where it says at pp 62–63:

> Every section must be read as a whole and self-contained, with the inclusion of saving clauses and provisos (*Venkataswami Naidu v Narasram* AIR 1966 SC 361). 'It is an elementary rule,' says Subbarao J, 'that construction of a section is to be made of all the parts together (*Gurmej Singh v Pratap Singh* AIR 1960 SC 122) and that 'it is not permissible to omit any part of it' (*State of Bihar v Hiralal* AIR 1960 SC 47). Sub-sections in a section must, therefore, be read as part of an integral whole and as being inter-dependant, each portion throwing light, if need be, on the rest (*Madanlal Fakir Chand v Changdeo Sugar Mills* AIR 1962 SC 1543), and a harmonious construction should be placed on them for the purpose of giving effect to the legislative intent and object (*Asharfi Lal v Board of Revenue* [1977] AWC 454.)

[17] Section 103E(1) and (3) of the LPA as discussed earlier clearly gives the Bar Council the right to appeal. Read in this context s 103E(4) of the LPA must be construed as a reference to a situation where the Bar Council is not already a party to the appeal. This interpretation is consistent with the other provisions of s 103E of the LPA and the role and function of the Bar Council.

[18] The fact that the DB is not a 'party aggrieved' for the purpose of s 103E of the LPA is not the end of the matter. An order for costs had been made against it by the High Court. That makes it a 'party aggrieved' on the authority of *R v Surrey Quarter Sessions Appeal Committee, Ex p Lilley* [1951] 2 All ER 659 where Lord Goddard CJ said at p 662:

> In the present case, the council having made this order refusing to register the applicant except subject to conditions, she appealed to a court of summary jurisdiction. That court found that the children were received in a room which was not part of the applicant's home and that they were received for educational purposes and not for the purpose of being 'looked after'. It was, therefore, held that the Act did not apply in respect of the applicant's home or her activities therein and that the council had no power to make the order. Costs were awarded against the

council. I doubt whether there was power to make such an order, but we have not heard any argument on the point. Against that order the council appealed. At first sight we were of opinion that the case appeared to be governed by the decision of this court in *R v London Sessions Appeal Committee, Ex p Westminster City Council* [1951] 1 All ER 1032; 115 JP 350 but our attention was called, at a somewhat late stage, to the fact that the council had been ordered to pay the costs. The first point is whether the council were 'persons aggrieved' within s 301 of the Act of 1936. The decision of the House of Lords in *Jennings v Kelly* [1939] 4 All ER 464; [1940] AC 206; 109 LJPC 38; 162 LT 1; Digest Supp seems to show that if a court, in the exercise of its discretion, awards costs against a person, that person at once becomes an aggrieved party and can appeal. His grievance is that he has been ordered to pay costs, and when he appeals against an order to pay costs it follows that the appellate court must be able to go into the merits, because it is only on a decision on the merits that it could determine whether or not the party ought to have been ordered to pay costs. If the court of summary jurisdiction in the present case had had no power to order costs, different considerations might have arisen, but on this point the case is distinguishable from *R v London Sessions Appeal Committee, Ex p Westminster City Council* [1951] 1 All ER 1032; 115 JP 350, because there no order for costs was made.

[19] In *Cook v Southend Borough Council* [1990] 1 All ER 243 itself the order for costs made against the council was held to be an alternative ground for making it an aggrieved person on the authority of *Jennings v Kelly* [1939] 4 All ER 464. As Woolf LJ said at p 255:

I would therefore dismiss this appeal on the basis that the council was a person aggrieved by the decision of the Essex justices quite apart from the order for costs which was made against the council. However, even if this was not the position, the effect of the order for costs is to make this case indistinguishable from the decision of the House of Lords in *Jennings v Kelly* [1939] 4 All ER 464; [1940] SC 206.

[20] On the facts of this case the DB is thus competent to maintain the appeal.

[21] There are certain strange features in this case which require to be addressed. Firstly, it is indeed difficult to comprehend why the DB has found it fit to cite Wong Weng Woh, the complainant, as a respondent. Having made the complaint is he now required to uphold the order of the High Court? This perplexing question is best answered by the DB itself. Secondly, the present predicament faced by the first respondent is caused by he himself. It was he who brought the DB as a respondent in the High Court thereby causing an order of costs to be made against it. It is now he again who is seeking to preclude the DB from being an appellant. He is indeed trying to take advantage of his own wrong.

A **[22]** In the upshot the preliminary objection must be dismissed with no order as to costs.

Nik Hashim FCJ:

B

[23] With regard to the preliminary objection raised by the first respondent at the outset of the hearing, I agree that the objection be dismissed with no order as to costs. I agree, without qualification, with the reasons which are so clearly expressed in the judgment of my learned brother Augustine Paul FCJ.

C

[24] As to whether the Disciplinary Board was a party aggrieved, it appears to me that s 103E(3) of the Legal Profession Act 1976 confers a right of appeal to any party aggrieved by the decision of the High Court. And since
D the DB was made a party by the first respondent before the High Court and the interests of the DB had been prejudicially affected by the order of costs against the DB by the decision of the High Court, the DB was a party aggrieved and was therefore entitled to appeal to the Federal Court against the High Court's decision (see *Cook v Southend Borough Council* [1990] 1 All
E ER 243 CA). In the circumstances, this court orders that this appeal be heard on its merit.

Abdul Aziz Mohamad FCJ:

F

[25] Of the several grounds of the first respondent's preliminary objection, that which I find merits consideration the most is that, viewed against the legislative backdrop of the Legal Profession Act 1976 ('the LPA') and the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and
G Disciplinary Committee) Rules 1994 ('the 1994 Rules'), disciplinary proceedings against an advocate and solicitor are adversarial in nature and that therefore the 'party aggrieved' in s 103E of the LPA must refer to one of the adversaries, which in the case of an appeal to this court, as the present appeal is, must be the complainant, who is the second respondent here, and
H cannot be the adjudicating Disciplinary Board ('DB') itself.

[26] The position taken by the appellant DB as to that ground is expressed in para 3 of its outline submission:

I

> 3. With respect, this submission is based on a misunderstanding of the nature of disciplinary proceedings. In proceedings relating to the discipline of professionals, there are no parties in the commonly understood meaning of the word where one party is seeking some sort of relief. There is no lis, or inter partes controversy, akin to a criminal prosecution or civil dispute.

[27] That statement was, I believe, inspired by certain pronouncements in *Attorney-General of the Gambia v Pierre Sarr N'Jie* [1961] AC 617 ('the *Gambian* case') and *Bar Council of Maharashtra v MV Dabholkar, etc* AIR 1975 SC 2092 ('the *Indian's* case'). In the *Gambian's* case Lord Denning said at p 631: 'When the judges exercise their power to suspend or expel, they do not decide a suit between parties. There is no prosecution as in a criminal case, nor any plaintiff as in a civil suit.' In the *Indian's* case AN Ray CJ said at para 24: '… there is no lis in proceedings before the disciplinary committee. When the disciplinary committee exercises the power to reprimand the advocates, or suspend the advocate from practice or remove the name of the advocate, the committee does not decide a suit between the parties.'

[28] But those pronouncements are not the expression of a universal norm as to the nature of disciplinary proceedings against legal practitioners. They were made in the context of the state of the relevant legislation in the jurisdiction concerned. Were it clear from our legislation, from express words or by necessary implication, that in Malaysia disciplinary proceedings against advocates and solicitors are adversarial in nature, those pronouncements will immediately be seen as incapable of applying to us.

[29] I do not think that it is a matter beyond controversy that in Malaysia disciplinary proceedings against an advocate and solicitor are not adversarial in nature. There are indications tending otherwise in the LPA and the 1994 Rules. But I do not intend to go into them or to decide the question because I find that, even assuming that there is no lis or inter parties controversy in disciplinary proceedings under the LPA, the DB's reasons for claiming to be a 'party aggrieved' under sub-s (3) of s 103E of the LPA are unacceptable. I will only say that, in my view, contrary to what is stated in para 25 of the DB's outline submission, in *Jerald Allen Gomez v Shencourt Sdn Bhd Majlis Peguam (Intervenor)* [2006] 2 MLJ 343 the High Court did not decide that disciplinary proceedings against an advocate and solicitor are non-adversarial. What happened in that case was that the disciplinary committee heard the advocate and solicitor first in his defence and it was only thereafter that the complainant company's representative propounded his complaint and was cross-examined by the advocate and solicitor. It was argued for the advocate and solicitor that such a procedure was unfair because the complainant company had a burden to prove its case beyond reasonable doubt and must discharge that burden before the advocate and solicitor could be called upon to enter upon his defence. The High Court (of three judges) said at p 99:

> In our view there is nothing irregular or unfair in the procedure adopted by the disciplinary committee. The proceedings although quasi-judicial in nature need not emulate the strict adversarial procedure practised in a criminal court. This is not a criminal trial but a disciplinary proceedings. So long as it is seen that 'fair

play is in action' to borrow Lord Morris' words, and that the procedures applied are just and fair, then, in this court's view, it cannot be said that the disciplinary committee had committed a breach of procedural fairness.

It was an opinion about fairness of procedure and not about whether the proceedings before the disciplinary committee were adversarial. The High Court merely said that the proceedings 'need not emulate the strict adversarial procedure practised in a criminal court'. That does not equate with saying that the proceedings were non-adversarial.

[30] The DB's essential reason for claiming to be a 'party aggrieved' may perhaps best be stated by quoting certain words from paras 27 and 30 of the *Indian's* case, since heavy reliance seems to be placed on the case in making the claim. In para 27, in relation to the meaning of 'a person aggrieved' in a statute that creates a right of appeal to courts against an administrative or judicial decision and that gives that right to a 'person aggrieved', it is stated: 'A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality'. The liberal approach that should be adopted in construing s 103E of our statute is to encompass within the term 'party aggrieved' a person who, to quote from para 30 of the *Indian's* case, 'represents the collective conscience of the standards of professional conduct and etiquette' of advocates and solicitors or 'acts as the protector of the purity and dignity of the profession'.

[31] In the *Indian's* case it was held that the Bar Council of Maharashtra was such a person. Its disciplinary committee had suspended certain advocates and solicitors from practice for three years. On their appeal to the Bar Council of India, its disciplinary committee set aside the orders of the disciplinary committee of the Bar Council of Maharashtra, which sought to appeal to the Supreme Court as a 'person aggrieved' under s 38 of the Advocates Act 1961.

[32] In the present case, the DB claims that it is such a person. The DB was established by amendments to the LPA by the Legal Profession (Amendment) Act 1992 (Act A812) to take over the control and disposal of disciplinary actions against advocates and solicitors which had been in the domain of the Bar Council, because of public dissatisfaction with its performance in the disposal of complaints against advocates and solicitors. In para 12 of the DB's outline submission, it is submitted that the amendments transferred the responsibility for the discipline of lawyers from the Bar Council to the Disciplinary Board.

[33] That is essentially true. Subsection (1) of s 93 does state in effect that the DB is established for 'the purposes of disciplinary proceedings' under

Part VII of the LPA. Subsection (1) of s 94 subjects all advocates and solicitors to the control of the DB, but 'for the purposes of all disciplinary actions'. It is clear from s 99 that the DB only acts on a complaint that is made or referred to it, which it is required to deal with in accordance with rules made under Part VII.

[34] But what may be understood from those provisions to be the function of the DB, of great importance though it undoubtedly is, does not, in my opinion, make the DB the person, to quote the words in the *Indian's* case again, who 'represents the collective conscience of the standards of professional conduct and etiquette' of advocates and solicitors or 'acts as protector of the purity and dignity of the profession'. The person who meets that description is, in my view, the Bar Council, which, under sub-s (1) of s 47 of the LPA, is responsible for the proper performance of the functions of the Malaysian Bar, one of whose functions is, under para (b) of sub-s (1) of s 42, 'to maintain and improve the standards of conduct and learning of the legal profession of Malaysia'. In addition, under paras (b) and (c) of s 57, the Bar Council has specific powers 'to answer questions affecting the practice and etiquette of the profession and the conduct of members', 'to take cognizance of matters affecting … the professional conduct' of members of the Malaysian Bar, and to 'take any action as it considers fit' in relation to 'the interests of the profession'.

[35] With those functions and powers, if, for example, there is public dissatisfaction with the conduct generally of members of the legal profession, it becomes the concern of the Bar Council to find ways and means to improve matters so as to restore public confidence in the profession and the dignity of the profession. It is not the concern of the DB, whose function is only in relation to actual complaints of misconduct that fall into its lap. It is answerable for the disposal of the complaints. It has not the higher function of worrying about the good name and dignity of the profession. That is the function of the Bar Council. Subsection (2) of s 93, which says: 'The Disciplinary Board shall have the same powers as those exercised by the Bar Council before the coming into force of this Act', has to be construed as referring to powers relating to the conduct of disciplinary proceedings and cannot be construed as effecting the transfer of the Bar Council's higher function to the DB.

[36] It is a reflection of that higher function of the Bar Council that in the realm of actual disciplinary proceedings the Bar Council is enabled to play certain important roles. Apart from the usual run of individual complainants, the Bar Council itself, under sub-s (3) of s 99, may make a complaint against an advocate and solicitor and become the complainant in the ensuing disciplinary processes. Under paragraph (1) of rule 8 of the 1994 Rules,

where a complaint by a person has been withdrawn the Bar Council is empowered to proceed with the complaint as if it was made of its own motion, and become the complainant in the ensuing disciplinary proceedings. Under sub-s (4) of s 103E, in an appeal under the section in a case where the Bar Council is not the complainant, the Bar Council is given the discretion to intervene and participate in the appeal.

[37] For those reasons, even if the term 'party aggrieved' in sub-s (3) of s 103E has to be construed according to the liberal approach that, according to the Indian case, has to be adopted in the case of a statute dealing with professional conduct, I am of opinion that the DB does not qualify as a party aggrieved. In this I am in agreement with the conclusion of my learned brother Augustine Paul FCJ that the disciplinary board is not a 'party aggrieved' for the purposes of s 103E.

[38] I am, however, with respect, unable to find, as my learned brother does, that the DB is nevertheless a 'party aggrieved' because an order for costs was made against it by the High Court. Although in oral submission the DB's counsel did include the order for costs as a ground for claiming the DB to be a 'party aggrieved', in the outline submission that was subsequently prepared on our direction to encapsulate the oral submission, this point has not been urged. I take it that it has been abandoned, and I think rightly, because the DB's memorandum of appeal, even as amended, does not include the order for costs as a ground of appeal.

[39] What has been urged in the DB's outline submission as an additional ground — but admitted as 'a narrow ground' — for claiming the disciplinary board to be a 'party aggrieved' is the allegation that the High Court made several comments on the procedure adopted by the disciplinary committee, comments allegedly made on the High Court's interpretation of r 23 of the 1994 Rules as a rule that makes the proceedings a formal trial between two parties, which interpretation is viewed as conflicting with the perceived opinion of the High Court in the *Jerald Gomez's* case, that the proceedings are non-adversarial, as to which I have said that the High Court did not so opine. It is submitted that the DB is a 'party aggrieved' because it has an interest to obtain a final decision as to the proper procedure to be adopted in the future. If the said comments of the High Court in this case have a bearing on its decision to allow the first respondent's appeal, then the comments are a matter that forms part of the merits of the appeal. If the DB has no locus standi to bring this appeal, it has no locus standi to show that the comments are wrong and that were it not for the matter of the comments the High Court should have dismissed the appeal. If the matter of the comments has no bearing on the High Court decision, then it is academic. The merely academic need to have a determination of a point of law or procedure for

future guidance cannot, in my opinion, by any stretch of the imagination or of argument, render the DB a 'party aggrieved' under sub-s (3) of s 103E.

[40] I would allow the preliminary objection.

Preliminary objection dismissed.

Reported by Sally Kee